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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,623	09/08/2003	Martin Reed Bodley	00630.0320-US-D2	1546
7590	10/26/2005			
Michael B. Lasky Altera Law Group Suite 100 6500 City West Parkway Minneapolis, MN 55344-7704			EXAMINER CHIANG, JACK	
			ART UNIT 2642	PAPER NUMBER
DATE MAILED: 10/26/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/657,623	BODLEY ET AL.	
	Examiner	Art Unit	
	Jack Chiang	2642	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21, 22 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-22 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **CLAIMS**

### **Art Rejection**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Leifer (US 5793865).

Regarding claim 21, Leifer shows a headset comprising:

A pivotal microphone arm (30) having a first position (fig. 5) and a second position (fig. 1);

A housing (14);

A hinge link (50);

The arm (30) having an outer surface (facing the user's face in fig. 5), and an inner surface (facing 14 in fig. 5) which lies against the housing (14); and

A visual indicator (46).

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Regarding claim 22, Leifer shows a headset comprising:

A pivotal microphone arm (30) having a first position (fig. 5) and a second position (fig. 1);

A housing (14);

A hinge link (50);

The arm (30) having an outer surface (facing the face in fig. 5), and an inner surface (facing 14 in fig. 5) which lies against the housing (14);

An aperture (for 32);

A visual indicator (46); and

The inner surface is surrounding the audio aperture (aperture for 32).

3. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mertturk (DE 29808425 U1) in view of Pralus et al. (US 6055312) and Leifer.

Regarding claim 25, Mertturk shows a headset wearable on and supported by a users ear (fig. 1) comprising:

A housing (1) having a first surface (1) having at least one transducer (2);

A microphone arm (5-7) suspended from the housing (1), and having an inner surface contacting the first surface (see fig. 2) and an outer surface (facing out in fig. 2), and having longitudinal dimension (see 5-7);

The arm (5-7) is pivotally connected to the housing (1) by a hinge link (7') having a pivotal axis generally orthogonal to the longitudinal dimension;

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The arm (5-7) can be moved between a first folded position (fig. 2) in which it lies up against the housing (1), and a second open position (fig. 1) in which it extends away from the housing (1);

Mertturk differs from the claimed invention in that it does not show a detail design of the hinge link (7'), in which the pivotal axis is not generally parallel with the first surface of the housing (1).

However, Pralus teaches providing a microphone arm having unlimited pivotal axes (ball joint 38, col. 6, line 17; col. 5, lines 66-67, col. 6, lines 1-2) which can be generally parallel with the first surface of the housing (10).

Hence, the concept of providing a hinge link is well taught by Mertturk, it would have been obvious for one of ordinary skill in the art to adapt Pralus's hinge link in Mertturk, such that the modification allows the microphone arm to be rotated in any direction about the pivotal point, this also allows the user to position the microphone in any position as desired (col. 5, lines 66-67, col. 6, lines 1-2 in Pralus).

Mertturk further differs from the claimed invention in that it does not show a visual indicator on the outer surface.

However, Leifer teaches providing a visual indicator on the outer surface of a microphone arm (see 46).

Hence, it would have been obvious for one of ordinary skill in the art to modify Mertturk with a visual indicator as taught by Leifer, such that it allows the headset to be functionally identified in various stages of the headset operations, such as mute, hold, ringing, on/off hook status etc. (col. 5, lines 10-27 in Leifer).

**ARGUMENT**

4. In response to the remarks (pages 4-5), on bottom of page 4 and top of page 5, applicant first argues that Leifer does not have a microphone arm ... lies up against the housing ... it never touches the housing.

The examiner disagrees. First, "touching" is not a claimed limitation. Second, the claimed limitation is "the microphone arm ... lies up against the housing". The term "against" is defined as "in a direction opposite to" in Webster's II University Dictionary. In Leifer's fig. 5, it is clear that the microphone arm (30) is lies up against (in a direction opposite to) the housing (14).

In page 5, lines 1-2, applicant further argues that Leifer is fundamentally different device not intended to become a compact unit.

The examiner disagrees. First, applicant did not define how compact a device should be in order to be considered as "compact". Second, Leifer is a headset which conventionally is a small/compact device. It is believed that this claimed feature is met by Leifer.

In regards to the new claim 25, see rejections above.

5. Applicant's arguments with respect to claims 21-22 and 25 have been considered but are moot in view of the new ground(s) of rejection.


6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 571-272-7483. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 571-272-7488. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JACK CHIANG  
PRIMARY EXAMINER